

DOCKET FILE COPY ORIGINAL  
Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the matter of )  
 )  
FAMILY BROADCASTING, INC ) EB Docket No. 01-39  
 )  
Order to Show Cause Why the Licenses for )  
Stations WSTX(AM) and WSTX-FM, )  
Christianstead, U.S. Virgin Islands, )  
Should Not Be Revoked )

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**MAR - 8 2004**

Federal Communications Commission  
Office of the Secretary

To: Chief Administrative Law Judge  
Richard L. Sippel

**ENFORCEMENT BUREAU'S  
APPLICATION TO USE DEPOSITION AT HEARING**

1. The Enforcement Bureau (the "Bureau"), pursuant to section 1.321(d)(3) of the Commission's rules, submits its Application to use the deposition of Alva Clarke at the hearing in this proceeding. In the Bureau's Direct Case, which it has provided to both counsel for Family Broadcasting, Inc. ("FBI") and the Presiding Administrative Law Judge, Mr. Clarke's deposition transcript appears as proposed exhibit ("EB Ex.") 8.

2. In pertinent part, section 1.321(d)(3) of the Commission's rules allows the use of the deposition of a witness, whether or not a party, in certain circumstances. One such set of circumstances states: "(iv) upon application and notice, that such exceptional circumstances exist as to make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used."<sup>1</sup>

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<sup>1</sup> 47 C.F.R. § 1.321(d)(3)(iv).

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3. The Bureau took Mr. Clarke's deposition by telephone<sup>2</sup> on January 3, 2003. During the deposition, FBI was represented by one of its then-counsel, Lauren Colby.

4. Mr. Clarke is one FBI's few full-time employees. According to Barbara James-Petersen, FBI's president, Mr. Clarke is the Program Director and Production Manager of the captioned Stations, WSTX(AM) and WSTX-FM. Deposition of Barbara James-Petersen taken January 15, 2003 (proposed EB Ex. 9), pp. 56-57. With the exception of a brief period during the 1990s, Mr. Clarke has continually remained in FBI's employ since the early 1990s. *See id.*, p. 57; proposed EB Ex. 8, p. 10. On a regular basis, Mr. Clarke works at the stations Monday through Friday from 8 a.m. to 4:30 p.m., and, occasionally, stays later and/or comes in to work at the stations on weekends. *Id.*, pp. 17-18. Finally, Ms. James-Petersen indicated that, when she was away from the stations for an extended period during the summer of 2001, she spoke to Mr. Clarke on a daily basis with respect to management issues. *See* proposed EB Ex. 9, p. 210. Thus, with the exception of Ms. James-Petersen and her father, Gerard A. Luz James, FBI's former president, Mr. Clarke would appear to be most knowledgeable about the history of and the current situation at the stations. In addition, he would appear to be Ms. James-Petersen's eyes and ears while she is away from these facilities.

5. Although the Bureau exchanged Mr. Clarke's deposition transcript and proposes it as an exhibit, FBI chose not to request that he be made available for cross-examination, nor has it raised any objection to its use. Likewise, despite Mr. Clarke's history and role at WSTX(AM)/WSTX-FM, FBI chose not to prepare an affidavit or otherwise offer him as a witness as part of its Direct Case. Indeed, as matters now stand,

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<sup>2</sup> Mr. Clarke remained on St. Croix for his deposition.

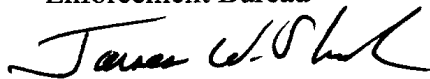
the only witness that FBI offers in support of its Direct Case is Ms. James-Petersen. Although it is FBI's prerogative to decide how it wants to meet its burdens of proceeding and proof in this hearing, it is the responsibility of the Commission to compile as complete a record as possible with which the Presiding Administrative Law Judge and, ultimately the Commission, will decide whether or not to revoke the licenses of two long-time broadcast stations.

6. In view of the foregoing, the Bureau submits that the public interest favors use of Mr. Clarke's deposition for any purpose, resulting in a more complete record in this proceeding. Conversely, exclusion of Mr. Clarke's deposition will result in evidentiary gaps that could raise unnecessary questions about the propriety of the Commission's ultimate determination with regard to the designated issues.

Respectfully submitted,



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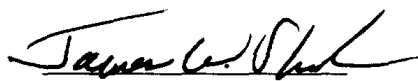
March 8, 2004

CERTIFICATE OF SERVICE

Moris Martinez, a staff assistant in the Enforcement Bureau's Investigations and Hearings Division, certifies that he has, on this 8<sup>th</sup> day of March, 2004, sent by first class United States mail, or by hand, copies of the foregoing "Enforcement Bureau's Application to Use Deposition at Hearing" to:

Daniel A. Huber, Esquire (by hand and first class mail)  
560 N Street, S.W., Suite 501  
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Chief Administrative Law Judge Richard L. Sippel (by hand)  
Federal Communications Commission  
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